

REMARKS

Applicants submit this Amendment in reply to the Office Action mailed November 16, 2005.

By this Amendment, Applicants cancel claims 32-36, without prejudice or disclaimer, amend claim 30, and add new claims 77-80. The originally-filed specification, drawings, and claims fully support the subject matter of amended claim 30 and new claims 77-80. No new matter has been introduced.

Before entry of this Amendment, claims 30-49 were pending in this application. After entry of this Amendment, claims 30, 31, 37-49, and 77-80 are pending in this application. Claim 30 is the sole independent claim.

On pages 2-3 of the Office Action, claims 30-49 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 62 and 81-86 of Application No. 10/247,998 ("the '998 application," now U.S. Patent No. 6,991,856). Applicants respectfully traverse this rejection.

The '998 application does not disclose or suggest the claimed invention. For example, independent claim 30 recites a sealed product including, among other aspects, "at least two components defining a container including a sealed interior cavity;" and "a crushable material disposed between the at least two components, the crushable material being in a deformed state and forming a seal between the at least two components." The Office Action apparently concedes that that the '998 application does not disclose either "a sealed interior cavity" or "a crushable material." Page 3 of the Office Action then asserts, however, that

it is well known in the packaging art (and in everyday life) to put a deformable material between two surfaces for which a seal is desired (a gasket, for instance) and it would have been obvious to one of ordinary skill in the art at the time the invention was made to put a gasket of the specified and appropriate type between the lid and container fitted with the multi-layer reactive material claimed in Application No. 10/247,998 in order to provide for a moisture-proof seal.

Applicants respectfully disagree. The Office Action has not provided any evidence disclosing at least the aforementioned aspects as required for establishing a case of *prima facie* obviousness. M.P.E.P. § 2142. Moreover, the alleged motivation is improper because it is neither clear and particular, as required by In re Dembiczak, 175 F.3d 994, 999 (Fed. Cir. 1999), nor found in the prior art, as required by In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Indeed, Applicants respectfully submit that the Office Action's alleged motivation is based on impermissible hindsight in view of Applicants' disclosure.

Accordingly, the Office Action has not provided any evidence to support either the alleged motivation or the alleged disclosure of the claims.

If the Office Action is taking Official Notice in rejecting the claims, Applicants respectfully submit that the Examiner has not met the requirements for meeting official notice as set forth in M.P.E.P. § 2144.03. The M.P.E.P. instructs:

[a]ny rejection based on assertions that a fact is well-known or is common knowledge in the art without documentary evidence to support the examiner's conclusion should be judiciously applied. Furthermore, as noted by the court in Ahlert, any facts so noticed should be of notorious character and serve only to "fill in the gaps" in an insubstantial manner which might exist in the evidentiary showing made by the examiner to support a particular ground of rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as principal evidence upon which a rejection was based.

Thus, if the Office Action is asserting Official Notice, Applicants respectfully request that either documentary evidence of these allegedly well known facts be provided, or that an affidavit or declaration under 37 C.F.R. §1.104(d)(2) setting forth the specific factual statements and explanation to support the finding be executed. Otherwise, Applicant respectfully traverses the assertion of Official Notice, as the Office Action has not shown either “a sealed interior cavity” or “a crushable material” as set forth in claim 30. Indeed, contrary to the assertion on page 3 of the Office Action, one of ordinary skill in the art practicing the ‘998 application may opine that a crushable material is not necessary for a sealed interior cavity because the fusible material and the remnant of a chemical transformation of a reactive multilayer material may be sufficient to form the sealed interior cavity by themselves.

Moreover, claims 31, 37-49, and 77-80 recite additional aspects that have not been addressed by the Office Action in a manner sufficient to support a *prima facie* case of obviousness. For example, the Office Action does not address how any of the following claim features are obvious in view of the ‘998 application:

- arrangements of the crushable material relative to the fusible material and/or reactive multilayer material, as set forth in claims 48 and 77-80;
- characteristics of the crushable material, as set forth in claims 38-43; and
- arrangements of the crushable material relative to grooves and protrusions, as set forth in 44-47.

The rejection of dependent claims 31, 37-49, and 77-80 should be withdrawn for at least these reasons. Applicants respectfully request that the next Office Action set forth either evidence or a convincing line of reasoning specific to the aforementioned

aspects as to why they are obvious in view of the '998 application. In the absence of such evidence or reasoning, Applicants submit that the Office Action's rejection under obviousness-type double patenting is improper.

Accordingly, for at least these reasons, Applicant respectfully requests withdrawal of the obviousness-type double patenting rejection based on the '998 application.

Dependent claims 31, 37-49, and 77-80 depend from independent claim 30. Therefore, these claims are allowable for at least the same reasons that independent claim 30 is allowable. In addition, each of the dependent claims recite unique combinations that are neither taught nor suggested by the cited reference and therefore each are also separately patentable.

In view of the foregoing amendments and remarks, Applicants submit that this invention is neither anticipated nor rendered obvious in view of the art cited against this application. Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

The Office Action contains other characterizations and assertions regarding the claims and the cited art with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

In discussing the specification and claims in this Amendment, it is to be understood that Applicants are in no way intending to limit the scope of the claims to any exemplary embodiments described in the specification or abstract and/or shown in

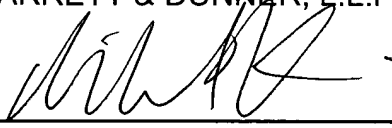
the drawings. Rather, Applicants are entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

Please grant any extensions of time required to enter this Amendment and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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